YS Metal (M) Sdn Bhd v Liew Kwai Choong

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S24-3119 OF 2002
AZMEL MAAMOR J
13 DECEMBER 2003

Landlord and Tenant — Determination — Tenancy at will — Non-renewal of tenancy period and payment of rent on monthly basis — Whether subsequent failure to pay rentals rendered tenancy automatically terminated

Landlord and Tenant — Rent — Payment — Whether lawful right to possession and occupation of premises proven — Whether claim for rental during party's absence allowed

The plaintiff and defendant entered into a tenancy agreement whereby the plaintiff agreed to rent the defendant's premises at RM1,500 for a two-year period. The agreement also allowed the plaintiff an option to renew the tenancy period for another three years upon expiry of the two-year period. The plaintiff did not exercise the renewal option but continued to reside at the said premises for another four years ('the four-year period') by paying monthly rental. About two years after vacating the premises, the plaintiff now applies to this court for a declaration that it was still a tenant of the defendant and therefore is allowed to occupy the said premises. The plaintiff also claimed that the defendant was to pay it a monthly rental of RM1,500 for the period, during the plaintiff's absence, when the premises were occupied by the defendant.

Held, dismissing the plaintiff's claim:

(1) The plaintiff was a tenant at will for the four-year-period. In that capacity, it's departure from the said premises and failure to pay the monthly rental thereafter rendered the tenancy automatically terminated. Furthermore, the plaintiff's action to terminate the utilities supply indicated that the plaintiff no longer intended to stay in the said premises (see paras 3 and 4).

(2) A party intending to claim rental of any premises must firstly prove the existence of a lawful right to possession and occupation of the said premises, which the plaintiff had failed to do. On the other hand, the defendant as the owner of the said premises would automatically have the right to possess and occupy the said premises as soon as the tenancy with the plaintiff was terminated (see para 5).

[**Bahasa Malaysia summary**

Plaintif dan defendan telah membuat satu perjanjian penyewaan di mana plaintif bersetuju untuk menyewa premis defendan untuk RM1,500 sebulan untuk jangka masa dua tahun. Perjanjian tersebut juga memberikan plaintif opsyen untuk membaharui jangka masa penyewaan untuk tiga tahun lagi selepas tamatnya jangka masa dua tahun tersebut. Plaintif tidak menggunakan opsyen tersebut tetapi terus mendiami premis tersebut untuk

empat tahun lagi ('jangka masa empat tahun tersebut') dengan membayar sewa bulanan. Lebih kurang dua tahun selepas mengosongkan premis tersebut, plaintif sekarang memohon mahkamah ini untuk perintah deklarasi bahawa ia masih lagi penyewa kepada defendan dan seharusnya dibenarkan untuk mendiami premis tersebut. Plaintif juga memohon untuk defendan membayar mereka sewa bulanan sebanyak RM1,500 untuk satu jangka masa apabila dia mendiami premis tersebut dalam ketiadaan plaintif.

Diputuskan, menolak tuntutan plaintif:

(1) Plaintif merupakan seorang penyewa bersementara untuk jangka masa empat tahun tersebut. Dalam kapasiti sedemikian, peninggalan mereka dari premis tersebut dan kegagalan untuk membayar sewa bulanan kemudiannya menyebabkan penyewaan tersebut terbatal secara automatik. Tambahan pula, tindakan plaintif untuk memotong bekalan api dan air menunjukkan bahawa plaintif tidak berminat untuk mendiami premis tersebut lagi (lihat perenggan 3 dan 4).

(2) Sesuatu pihak yang ingin menuntut sewa untuk mana-mana premis, pertamanya, harus membuktikan kewujudan hak yang sah untuk milikan dan mendiami premis tersebut, yang mana plaintif gagal untuk berbuat demikian. Sebaliknya, defendan sebagai tuan punya premis tersebut mempunyai hak automatik untuk memiliki dan mendiami premis tersebut selepas penamatan penyewaan dengan plaintiff (lihat perenggan 5).]

Notes

For cases on tenancy at will, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1382–1383

For cases on payment of rent, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1354–1358

T Revathy (Ho dan Rakan-Rakan) for the plaintiff
Shazalyna Mohamad (CK Lee & Associates) for the defendant

Azmel Maamor J:

[1] The Plaintiff's claim against the Defendant was for a declaration that the Plaintiff was still a tenant of the Defendant in respect of premises known as Lot 3846, Jalan 4-D, Kampung Baru Subang, 4000 Shah Alam, Selangor ('the said premises') and, as such, the Plaintiff claimed that it must be allowed to enter and occupy the said premises.

[2] The brief facts of the case are as follows. On 11 October 1999 the Plaintiff and the Defendant entered into a tenancy agreement whereby the Plaintiff agreed to rent the said premises from the Defendant for a period of two years wef 1 September 1994 at a rental of RM1,500 per month. Under the terms of the Tenancy Agreement, the Plaintiff/Tenant was given an option to renew the tenancy for a further period of three years after the expiry of the two year period. However, the Plaintiff failed to exercise the option to renew. Notwithstanding that, the Plaintiff was allowed to continue to stay in the said premises. Such being the circumstances, it was

assumed that the Plaintiff was a tenant on a month to month basis at a monthly rental of RM1,500. This situation continued for a period of about four years when the Plaintiff decided to surrender and give up possession of the said premises on or about 31 October 2000. From that period onwards, the Plaintiff did not occupy the said premises and also did not pay any monthly rental to the Defendant. In addition to that, the Plaintiff had also applied to disconnect the electricity and water supply to the premises from the relevant authorities. Some two years after having vacated the premises, the Plaintiff applied to the Court for the above declaratory claim against the Defendant. The originating summons was filed on 14 October 2002.

[3] The only issue that is required to be determined in this case is whether, on the facts and in circumstances of this case, the Plaintiff could still be regarded as the tenant of the Defendant in respect of the said premises. In my view the answer to that is an emphatic 'no'. My reasons are as follows. To begin with, based on the facts of this case the status of the Plaintiff for the period between September 1996 to October 2000 was as a tenant at will, that is a tenant on a month to month basis. Such being its status, when the Plaintiff left the premises on or about 31 October 2000 and failed to pay any monthly rental, the tenancy was automatically terminated. Technically speaking, even if the Plaintiff was still continuing to occupy the premises, its failure to pay the monthly rental would be a valid ground for the Defendant to terminate the Agreement. In this case not only did the Plaintiff fail to pay the monthly rental but it had also vacated the said premises. Therefore, the only legal conclusion that could be derived from such circumstances was that the Plaintiff had clearly intended to terminate the tenancy. As such the Defendant was legally correct to conclude that the Defendant had voluntarily terminated the tenancy.

[4] Apart from that, the Plaintiff had also taken the necessary action to have the water and electricity supply to the said premises disconnected. This action further indicated that the Plaintiff was no longer intending to stay in the said premises. Having regard to the circumstances as stated above, I have come to the conclusion that there are no merits whatsoever in the Plaintiff's claim.

[5] There was also a third prayer claimed by the Plaintiff in its originating summons. The Plaintiff demanded that the Defendant pay the Plaintiff monthly rental of RM1,500 for the period the Plaintiff had left the said premises, and in its absence, they were occupied by the Defendant. This claim is totally without any merit. In my view, for anybody to claim for rental of any premises, he must first of all show that he has lawful right to possession and occupation of the said premises. In this case, it is clearly shown that the Plaintiff no longer had the right to possess and occupy the said premises. On the other hand, the Defendant, as the owner of the said premises, would automatically have the right to possess and occupy the said premises as soon as the tenancy with Plaintiff was terminated. The question for the Defendant to pay anything to the Plaintiff would not arise. This claim must also fail.

[6] Having regard to the whole circumstances of this case, I have arrived at the decision that the Plaintiff's claim be dismissed with costs.

Plaintiff's claim dismissed with costs.

Reported by AG Kalidas